

Modifying Public Bid Caps

April 2002

Commerce is announcing a new procedure in the Public Bid Process that will allow modification of the remediation cost cap established through the Public Bid Process under limited circumstances when closure is denied and more funds are necessary to obtain closure.

Claimants, consultants, and lenders have expressed the need for more flexibility in evaluating and establishing the cost caps and "change orders" for remediation activities since the implementation of the Comm 47 rule changes in April 1998. Consulting firms have also expressed disappointment with being the "low bidder" and yet not getting the work. Some claimants have been concerned that the successful bidder's remedial strategy is inadequate to achieve closure, even where DNR and/or Commerce believes the approach is viable. Moreover, Commerce is noticing a decline in the number of consulting firms participating in the Public Bid Process and in the number of bids received per site. Although Commerce is confident that the current process develops an appropriate remedial strategy and establishes the least costly remedial method, we are hopeful the new procedures described below will increase claimant confidence and consultant participation in the Public Bid Process.

Commerce (where Commerce has the administrative authority) and Commerce and DNR (where DNR has authority), may modify the cost cap established through the Public Bid Process under the following conditions:

- The successful bidder* must be selected by the claimant to perform the remediation through closure,
- The remedial strategy (work scope), as defined in the successful bidder's bid response has been completed, and
- A closure request submitted prior to exceeding the cap has been denied.

Consistent with existing rules, the consultant must notify Commerce prior to exceeding a cost cap and a cost estimate provided by the consultant or the Public Bid Process will determine the amount of additional funds necessary to obtain closure.

If the claimant selects a consulting firm other than the successful bidder to carry out the remediation through closure, Commerce will not modify the cost cap established through the Public Bid Process. It will consider modifications only if the lowest successful bidder is actually used by the claimant. If bidders continually submit bid responses containing a Total Bid Cost that is insufficient to achieve closure or if they fail to complete the stated remedial strategy, Commerce may disqualify individual bids and/or disqualify the submitter from future public bidding.

This procedure will be implemented during the 19th Round of the Public Bidding Process.

If you have questions about the Public Bid Process, you can contact me, Eric Scott, at escott@commerce.state.wi.us.

*The successful bidder is the entity who complies with all of the Bid Document provisions and provides the lowest total cost to a defined site closure or no-further-action status.